

Department of the Interior

1409.407-3

hearing record and provide said findings and record to the Debarring Official. The fact-finding official shall not make any recommendations unless the Debarring Official has expressly requested such recommendations in writing. Following receipt of the findings of fact, the Debarring Official shall complete debarment proceedings and issue a written debarment decision.

(d) *Administrative Agreements.* Matters may be resolved through administrative agreement at any stage of proceedings of a debarment action where a contractor agrees to appropriate terms. The specific effect of administrative agreements that incorporate terms regarding eligibility for DOI contracting will vary with the terms of the agreements. In general, such agreements resolve debarment concerns and thereby terminate any imposed or pending award ineligibility. In the event of an agreement, PAM will notify COs of the agreement and its terms.

(e) *Administrative Appeal.* Administrative review of the Debarring Official's decision under FAR 9.406-3(e) may be sought as follows:

(1) The contractor may within thirty (30) days of receipt of the decision, request the Debarring Official to reconsider the decision for clear material errors of fact or law which would change the outcome of the matter.

(2) The Debarring Official may exercise his/her discretion and stay the debarment pending reconsideration review. The Debarring Official will notify the contractor in writing of the decision on reconsideration.

(3) A review request under this section must be in writing, clearly state the specific findings believed to be in error and include the reasons or legal bases for the position.

1409.407 Suspension.

1409.407-1 General.

The Director, PAM, is authorized to make the determination in FAR 9.407-1(d).

1409.407-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for suspension, as listed in FAR 9.407-2, becomes known to a DOI employee, the matter shall be referred

by the case representative to the Suspending Official, in consultation, as appropriate, with the HCA involved, the SOL, and the OIG. The case representative will review the matter and, if warranted, prepare and submit to the Debarring Official for consideration an Action Referral Memorandum (ARM) with supporting documentation.

(b) *Notice of Suspension.* After review of the ARM, if appropriate, the Debarring Official shall initiate a suspension by taking the actions listed in FAR 9.407-3(c), and advising the contractor of the Department's process for contesting the action.

(c) *Decision making process.*

(1) For suspension actions based upon an indictment or equivalent charging document, or where there is no genuine dispute over material facts, consistent with FAR 9.407-3(d), or in which additional proceedings to determine disputed material facts have been denied on the basis of DOJ advice, the Suspending Official shall make a decision on the basis of the information in the administrative record, including any submission by the contractor. Where the proceeding includes an oral PMIO to the Suspending Official, the PMIO will be conducted in an informal business meeting format and tape recorded for the administrative record.

(2) For actions listed under FAR 9.407-3(b)(2), when the Debarring Official concludes from information in a contractor's response to the proposed action notice that facts material to the existence of a cause for debarment are genuinely in dispute, the Suspending Official may refer the disputed material facts to another official for hearing and findings of fact.

(i) The hearing shall be conducted in accordance with Suspension Program fact-finding procedures.

(ii) The fact-finding proceeding will be transcribed. The reporter's fees and other direct costs associated with the hearing shall be borne by the bureau or office initiating the suspension referral, except in the case of actions initiated by the OIG. For actions initiated by the OIG, costs will be borne by Bureaus and/or offices out of which the matter arose. A transcript of the proceedings shall be made available to the